

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 165 of 1998

in

MISC.CIVIL APPLICATION No 2196 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

PANKAJBHAI PUSHKARRAY MUNSHI

Versus

KIRITBHAI HARMANBHAI PATEL

Appearance:

1. Misc.Civil Application No. 165 of 1998
MR MB GANDHI for Petitioner
MR DN PATEL for Respondent No. 1
 2. Misc.Civil Application No. 2196 of 1997
PREMAL R. NANA VATY for Petitioner
MR DN PATEL for Respondent No. 1
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CORAM: MR.JUSTICE B.C.PATEL and
MR. JUSTICE R.P.DHOLAKIA

Date of Order : 04/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The petitioner has moved this Court by filing an application under Sections 10 and 12 read with Sec.2(b) of the Contempt of Courts Act, 1971 for taking action against the respondent.

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#. The petitioner was the landlord of the respondent-tenant. The petitioner filed H.R.P. Suit No.3266 of 1987 for possession which was decreed on 22-10-1996, as prayed for. The appeal preferred by the present respondent being Civil Appeal No.166 of 1996 came to be dismissed by the appellate bench of the Small Causes Court, Ahmedabad. The opponent herein preferred Civil Revision Application No.930 of 1997 against the order of eviction before this Court which has also been dismissed by a speaking order. The respondent, however, filed an undertaking on oath which is at Annexure-B, on 24-11-1997 before this Court for vacating the premises on 16-1-1998 if there is no order passed in favour of the respondent by the Apex Court. In view of the said undertaking, respondent was allowed to occupy the premises in question.

#. It is very interesting to note that the respondent is not residing in the premises since 1993 as stated at the Bar by the advocate for the respondent and he is residing in the adjoining premises. In the premises, for which eviction decree is passed, the respondent stored some of his articles. Though he was actually not using the premises since 1993 for residence, for one reason or the other, he was not vacating the same but he was interested in keeping the premises in his possession.

#. As there was no indication from the respondent to hand over the possession, the respondent was served with a notice dated 13-1-1998 by the petitioner, copy of which is at Annexure-C. He was reminded of the undertaking given by him before the Court to hand over the vacant and peaceful possession of the premises in question on or before 16-1-1998. He was also conveyed that if he fails to hand over the vacant and peaceful possession of the premises, then the petitioner will be constrained to file contempt proceedings.

#. It is surprising that despite the notice being served on the respondent, he did not vacate the premises

and ultimately the petitioner was constrained to file the application before this Court. The Court issued notice on 27-1-1998 which was made returnable on 9-2-1998.

#. Learned advocate, Mr. Nanavati, earlier appeared before the Court on behalf of the respondent and took some time and on the same day, possession of the premises was handed over to the petitioner by the respondent. Had the petitioner not approached this Court, possibly the possession would not have been handed over and it is very much apparent from the fact that since 1993 though the premises in question was not used as a residential premises and was used merely as storage of some articles, the respondent continued to be in possession. The grievance made by the petitioner is that even mense profit for a pretty long period is also not paid.

#. The respondent thereafter filed an affidavit tendering an unconditional apology. He has stated that he tenders unconditional apology for the inconvenience caused to the Court. He has further stated that he has not committed any contempt by disobeying any order passed by this Court as alleged in the application. The respondent came out with a case that the applicant has tried to mislead this Court by suppressing true and correct facts. The respondent introduced the story of one common friend, namely of one Shri Kinarivala, who requested the applicant to give some more time. But the same was not accepted and said Shri Kinarivala by oversight forgot to communicate to the respondent and therefore, respondent did not vacate the premises. The affidavit of Shri Kinarivala has not been tendered before us for the reasons best known to the learned advocate.

#. It is required to be noted that as undertaking was filed, the Court permitted the respondent to keep the possession only with a view to enable the respondent to see that within a reasonable period, he finds some alternative accommodation. Outer limit for vacating the premises is to be strictly adhered to. That is the last day on which day under any circumstances he has to vacate the premises. Yet, some unavoidable circumstances may be there which may be taken into consideration by the Court while imposing punishment on the contemner. It may a case of sudden death in the family or a case of long serious sickness in the family. These circumstances may be taken into consideration while passing an order. But in the instant case, we find that the respondent, though was not residing in the premises since 1993, did not vacate the premises even though he was reminded of his duty. As the respondent has filed an undertaking and he

did not act according to undertaking, strict action is required to be taken against the respondent-contemnor, more particularly when it is found that he has wilfully omitted to act as per undertaking given to the Court. If no action is taken, litigants will carry an impression that undertaking has no value.

#. We are of the view that once undertaking is filed and person has not acted according to the undertaking, strict view of the matter must be taken except, the Court comes to the conclusion that the respondent/contemnor was restrained from acting in accordance with that undertaking for the reasons which were beyond his control and not otherwise.

##. In case of Mohamad Jahangir Vs. Rustam reported in AIR 1984 SC 1826, learned Single Judge of Bombay High Court held that "... action of defendants Nos.4 and 6 clearly shows utter contempt for orders of the court and undertaking given by them. I have no hesitation in holding these defendants have committed gross contempt of court... in my judgment there is no circumstance whatsoever to take any lenient view of the gross contempt committed by defendants 4 and 6 and both of them are liable to be punished under the provisions of Contempt of Courts Act." Learned Single Judge committed each of the two petitioners to civil jail for the period of one month. Apex Court held that "there was clear breach of undertaking given by the petitioners and we are of the opinion that the Single Judge was quite right in giving appropriate direction to close the breach" while negating the contention that the learned Single Judge was not justified in giving certain directions in addition to punishing the petitioners for contempt of court.

##. The Apex Court in the case of J. Vasudevan Vs. T.R. Dhananjaya reported in AIR 1996 SC 137 has pointed out in para 14 the object of passing the order under the provisions of Contempt of Courts Act. The said para reads as under:-

"Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemnor, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unclenching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be

wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law."

##. We would have taken a very strict view of the matter. But as the contemnor has purged the contempt by handing over possession after service of process, it would be just and proper if the respondent is directed to be lodged in a civil prison for a period of seven days and to pay a fine of Rs.2,000/-, which shall be deposited by the contemnor within a period of one week without fail. Rule made absolute.

##. At the request of learned advocate, Mr.Patel, we suspend the order of committing the respondent to civil jail for a period of four weeks from today. However, amount of fine shall be paid as directed.

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